

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**ALBUQUERQUE HEALTH SERVICES, INC.**

**and**

**Case 28-CA-192313**

**WILLIAM HUNTER**

**ORDER**

The Respondent's Motion to Dismiss the complaint is denied. The Respondent has not demonstrated that the complaint fails to state a claim upon which relief can be granted. Further, to the extent that the Respondent's motion can be viewed as seeking summary judgment, the Respondent has failed to establish that there are no genuine issues of material fact warranting a hearing and that it is entitled to a judgment as a matter of law.<sup>1</sup>

Dated, Washington, D.C., July 6, 2017.

PHILIP A. MISCIMARRA, CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

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<sup>1</sup> Chairman Miscimarra agrees with the denial of the Respondent's motion as stated in the Board's Order. As he stated in *L'Hoist North America of Tennessee, Inc.*, 362 NLRB No. 110, slip op. at 3 (2015) (concurring), "[I]n response to a motion for summary judgment, I believe that the General Counsel at least must explain in reasonably concrete terms why a hearing is required. Under the standard that governs summary judgment determinations, this will normally require the General Counsel to identify material facts that are genuinely in dispute." See also *Leukemia & Lymphoma Society*, 363 NLRB No. 124, slip op. at 2 (2016) (then-Member Miscimarra, dissenting). In the instant case, it is evident from the parties' respective positions that disputes exist as to material facts regarding whether the Respondent violated the Act as alleged in the complaint.